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confine our judgment to the rather unusual facts before us, and we think that we do no violence to the meaning of Article 179 (old), now Article 182, by holding that the present darkhast is within three years of the last application made by the judgment-creditor to a Court to take some step-in-aid of the execution of his decree. For these reasons we think that the appeal ought to be allowed and the judgment of the Court below reversed. We direct, therefore, that the darkhast be restored and that execution do proceed upon it according to law. We think that this appeal must be allowed with all costs.

Appeal allowed.

G. B. R.

APPELLATE CIVIL.

Before Mr. Justice Beaman and Mr. Justice Heaton.

1914.
July 8.

MANJUNATH SUBRAYABHAT (ORIGINAL PLAINTIFF), APPELLANT, *v.* SHANKAR MANJAYA (ORIGINAL DEFENDANT), RESPONDENT.*

Vritti *inalienable—Alienation in special cases under special conditions—Local usage and custom.*

As a general rule *vrittis* are inalienable. They may be alienated in special cases and under special conditions provided that such alienations can be supported by local usage and custom.

Rajaram v. *Ganesh*(1), referred to.

SECOND appeal against the decision of C. V. Vernon, District Judge of Kanara, reversing the decree of V. V. Bapat, Subordinate Judge of Honavar.

The plaintiff sued in the year 1908 to recover from the defendant Rs. 49-15-11 alleged to be due to him on account of his purchase of a $\frac{3}{4}$ share of a *vritti* consisting of cash allowance.

* Second Appeal No. 574 of 1912.

(1) (1898) 23 Bom. 131.

The defendant denied knowledge of the plaintiff's purchase and contended that the right to the cash allowance was inalienable beyond the life-time of the plaintiff's deceased vendor, that the plaintiff or his predecessor never performed the worship in respect of the allowance and consequently the plaintiff was not entitled to the allowance and that the suit was not maintainable without a certificate from the Collector under the Pensions Act.

The Subordinate Judge dismissed the suit for want of a certificate under the Pensions Act.

The plaintiff having appealed and produced the necessary certificate the District Judge restored the suit and remanded it for decision on the merits.

On the remand the Subordinate Judge allowed the plaintiff's claim. In the judgment the Subordinate Judge remarked :—

The right to worship and its remuneration is ordinarily inalienable but when as here the alienation is to a member of the family or to a Brahmin of the same caste as the alienor and equally competent to perform the worship it cannot be said to be opposed to the principles of Hindu Law or public policy.

On appeal by the defendant the District Judge remanded the case for findings on issues observing :—

The chief point for decision appears to be whether the alienation of the Pujehakka and Tastik is valid. The general principle appears to be to discourage such alienations, especially in the case of strangers but in certain cases they have been upheld. As the High Court has observed in *Rajaram v. Ganesh* (I. L. R. 23 Bom. page 131) "by force of custom a limited right of partition and alienation might be estaldished, and the custom must be ascertained by evidence in each class of cases". The lower Court has not formally enquired into this point and I therefore follow the example of the High Court in the case quoted above and send down the following issues for a finding on the same :—

(1) Whether a custom and practice of the alienation of the Pujehakka and Tastik in dispute was established either generally or as limited to particular classes of heirs or relations ?

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(2) Whether the alienation to the plaintiff-respondent falls within or is governed by such custom and limitation?

(3) Whether the claim to Narayan's (plaintiff's vendor's) share is time-barred in respect of the two years 1904 and 1905?

The findings of the Subordinate Judge on the first two remanded issues were in the negative and on the third in the affirmative.

The said findings having been certified to the District Judge, the appeal was allowed and the suit was dismissed.

The plaintiff preferred a second appeal.

S. S. Patkar, for the appellant (plaintiff).

There was no appearance for the respondent (defendant).

BEAMAN, J.:—The property in question in this suit is a *vritti*. The plaintiff claims to be the alienee of three-quarters of the cash allowance paid for the due performance of ceremonies and the worshipping of the idol. The first Court held that the alienation was good and decreed the plaintiff's claim. On appeal the learned Judge remanded certain issues inviting an inquiry into any local custom which would justify the alienation of such a peculiar right as this to one who was not a member of the original family which enjoyed the priestly privilege. The findings on the remanded issues were all against the plaintiff. His suit was accordingly dismissed.

On appeal it has been strenuously contended that the learned Judge of first appeal adopted a wrong method. It is said that the general principle is that *vrittis* are alienable to suitable persons, unless a local custom to the contrary or some prohibition by the founder can be proved. This certainly does appear to be the effect of Melvill, J.'s decision in the case of *Mancharam*

v. *Pranshankar*[1]. On the other hand there is a much later decision by Ranade, J., in the case of *Rajaram* v. *Ganesh*[2], which, in our opinion, states both the underlying principle and method of dealing with cases like this more correctly. It is true that in that judgment the learned Judge refers with seeming approval to the case of *Mancharam* v. *Pranshankar*[1], but the principle, he lays down, is that the general rule is against the alienability of *vrittis*. *Vrittis* may be alienated in special cases and under special conditions provided that such alienations can be supported by local usage and custom. That this was his ground is clear enough from the issues which he framed and remanded for trial. The learned Judge of first appeal appears to have followed exactly the course adopted by the learned Judges in *Rajaram* v. *Ganesh*[2], and having regard to the character of these *huks* and the desirability of preventing too free alienations of what in essence is a sacred and personal right, we are not prepared to say that the learned Judge of first appeal was wrong. We, therefore, think that his decree must now be confirmed and this appeal dismissed.

Appeal dismissed.

G. B. R.

(1) (1882) 6 Bom. 298. (2) (1898) 23 Bom. 131.

APPELLATE CIVIL.

Before Mr. Justice Beaman and Mr. Justice Heaton.

1914.

July 8.

SUNDRA ALIAS NARABADA (ORIGINAL DEFENDANT 1), APPELLANT, *v.* SAKHARAM GOPALSHET GANDHI AND OTHERS (ORIGINAL PLAINTIFFS), RESPONDENTS.*

Civil Procedure Code (Act V of 1908), section 11—Suit for declaration and recovery of possession—Defence of res judicata*—Parties not adequately represented in the former suit and suit not fully tried—No bar of* res judicata.

A suit brought by three plaintiffs as surviving coparceners of a joint Hindu family for a declaration that the property in suit formed part

* First Appeal No. 146 of 1913.